UNITED STATES DEPARTMENT OF AGRICULTURE
FARM CREDIT ADMINISTRATION
WASHINGTON, D. C.

SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

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Cooperative Held Purchaser of Milk Under OPA Regulations

On November 8, 1944, the Federal District Court of the United States for the Eastern District of Pennsylvania decided the unreported case of Bowles v. Lehigh Valley Cooperative Farmers, File No. 3484, and held that the Administrator of the Office of Price Administration was entitled to enjoin the cooperative -

> ". . . from directly or indirectly purchasing or receiving fluid milk for re-sale from any producer and from paying therefor a price higher than the maximum price permitted by Maximum Price Regulation No. 329, as amended, or otherwise violating said Regulation."

The complaint filed by the OPA alleged that the cooperative had -

> ". . . paid to producers of milk during the months of May, June, July, August, and September 1943, a price in excess of the maximum price allowed by the Regulations and Orders issued by the Office of Price Administration, the maximum price being Three and 72/100 Dollars ($3.72) per hundred weight for Class 1 milk having four percent (4%) butter fat f.o.b. Allentown, Pennsylvania. The return to the members during those months being as follows:

May	$3.76
June	4.12
July	4.27
August	4.46
September	4.49

> "An answer was filed by the defendant denying that it was subject to the provisions of the Act or the Regulations issued by the Office of Price Administration, contending that it is not a 'purchaser' of milk within the meaning of the Regulation and Order and therefore the maximum prices fixed therein are wholly inapplicable to the transactions with its patrons. Further, the defendant maintains that even if the language of the Regulation and Order is deemed to apply to it, such Regulation and Order are invalid on a number of statutory and constitutional grounds."

The facts in the case were stipulated and were summarized by the court as follows:

> "The Lehigh Valley Cooperative Farmers was chartered on February 24, 1933 by the Commonwealth of Pennsylvania under the Act of Assembly of 1929 P. L. 885; it has six hundred fifty (650) stockholders, four hundred eight (408) of whom ship milk to the defendant, all of whom are farmers and producers of milk living throughout the Lehigh Valley. Each member is required to be a stockholder and each farmer member is obliged to be a holder of one or more shares of common stock. Each member has one vote regardless of the number of shares held by him, and no person can deliver milk to the cooperative unless he is a stockholder. The cooperative is the owner of a large and modern plant located in the City of Allentown, Lehigh County, Pennsylvania.

The farmers either deliver or cause to be delivered the milk to the plant and upon its arrival, is taken from the delivery platform into the plant and all of the milk is dumped into a common receptacle. A record is made of the pounds of milk and the butter fat content delivered by each farmer. After co-mingling, it is put through a pasteurizing, homogenizing, irradiating and bottling process and is shipped out for marketing and delivery to the ultimate consumer. The receipts from the sales of milk are placed in a common account of the cooperative, monthly work sheets being prepared, show the total receipts from the sales and the total pounds of milk received, processed and sold. From the amount received from the sales is deducted the various operating costs, a proprotionate amount of reserve required to be set up under the Act of Assembly and in accordance with the By-Laws, a proportionate amount of estimated dividends payable on the preferred and common stock not in excess, however, of six percent (6%). The net balance of receipts is then apportioned among the entire quantity of milk delivered during the entire month and the return per hundred weight obtained in accordance with the butter fat content. This return per hundred weight is then distributed to the farmers by check, monthly, in accordance with the pounds of milk which they have delivered during the month. A subsidy is also received by the defendant from the Commodity Credit Corporation, which is included in the total receipts, which is distributed pro rata among the farmer members. The cooperative has entered into a written agreement with each of its members, wherein is recited the contract rights of the parties in their dealings with each other."

Although it is not clearly disclosed by the opinion in the case, it is understood that the cooperative association argued that it was functioning strictly on an agency basis in receiving milk from its members which it distributed to consumers, and was therefore entitled to return to the farmers a price for their milk which was not in excess of the OPA price which a farmer could have received for his milk had he disposed of his milk direct to a consumer thereof. The association argued that the regulations of OPA were applicable only to purchasers of milk and that the association was not engaged in the buying of milk from its producer members, but was simply engaged in receiving milk from them, marketing the milk, taking out its authorized deductions, and distributing the balance among its member patrons on the basis of the quality and the amount of milk delivered by them. In other words, the association argued it was simply the "hired man" of its farmer members, and just as the hired man of an individual farmer could have delivered milk to a consumer and collected the OPA price of milk sold to consumers, the association argued it acted as the "hired man" for all its farmer members. The court rejected this argument and held that the association purchased the milk from its members within the meaning of the OPA regulations.

The following quotations are taken from the opinion in the case:

"The question posed by the defendant that the milk which it receives from its patrons is not subject to Regulation No. 329 and its amendment, particularly No. 13 and Order G-4, is essentially a question

of construing the language of the Regulation and Order, rather than examining their statutory and constitutional basis. Section 1351.401 of the Regulation provides in part that:

> '. . . on and after February 13, 1943, regardless of any contract, agreement, or other obligation, no purchaser, in the course of trade or business, shall buy or receive "milk" from any producer at a price higher than the maximum permitted by this regulation. . . .'

"Section 1351.404, defines a 'purchaser' as follows:

> '(d) "purchaser" means any person who buys "milk" from a producer for resale.'

"In a footnote thereto, there is the following:

> 'A farmers' cooperative is a "purchaser" whenever it purchases "milk", and its purchases from both member and nonmember producers are, therefore, covered by the regulation. The fact that a farmers' cooperative may also be a producer, as defined in this section, is immaterial.'

"Since the defendant does not contest the fact that its members are producers within the meaning of the Regulation, as has been indicated, the main question here is whether the defendant is a purchaser within the meaning of the Regulation.

"In determining whether the defendant is a 'purchaser', if we look at the agreement which the defendant has with its patrons, it is found that in the first paragraph thereof is set forth the following:

> 'That the producer will and by this agreement does consign for sale to the association, all milk and cream produced on any farm in the control or operated by said producer except, etc. . . .'

"This, it seems to me, is very indicative that a 'sale' is being made to the defendant, since there is no suggestion of 'agency' unless we take into consideration the word 'consign', and it is rather persuasive of a sale since the language speaks of 'consignment for sale to the association' rather than a 'consignment to the association for sale.' In Maryland & Virginia Milk Producers Association v. District of Columbia, 119 Fed. (2d) 787, a milk producers' cooperative sought to escape an intangible personal property tax assessed against its accounts receivable for sales of milk, and a business privilege tax levied against its gross proceeds from sales of milk, on the ground that it was only an agent for its producer members, that it did not 'own' the accounts receivable, and that its gross receipts from its sales of milk belonged to its patrons; the language in the marketing agreement provided that the producers agree to 'consign or to have consigned to the association in accordance with its instructions' all their milk and cream, and the

cooperative agreed to sell the milk 'consigned' to it. The Court held that the cooperative was not an agent, but acted as principal, and owned the accounts receivable, and was therefore subject to both the taxes.

"The instant agreement is much stronger because it contains express words of sale to the association, while in the case just referred to, only words of consignment were used. It would seem therefore from the marketing agreement, which the defendant executes with its patrons that the transaction is expressed in terms of sale rather than of agency, and therefore should be considered as passing title to the milk. To the same effect is People v. Shoemaker, 228 App. Div. 314, 254 N.Y. 367, where even though the contracts between the cooperative and its members were phrased in terms of agency, the Court reached the conclusion that the defendant in purchasing milk from the cooperative was not buying from a producer within the meaning of the statute, which imposed a penalty against the defendant milk dealer who failed to secure a license and post a bond where milk was bought from producers. An analogous decision ignoring express language of agency, and holding that a sale took place, is Nelson v. Guaranty Trust Co., 60 Fed. (2d) 463. It would accordingly seem to me that the language of the marketing agreements, executed between the defendant and its patrons, shows that a sale was contemplated and not an agency and as we have seen from the cases here cited that even if the language itself should sound in agency, there is ample authority to hold that title nevertheless passes from producer members to cooperative, and accordingly there is a 'purchase' within the general commercial acceptation of the term."

Attention is called to the fact that the court emphasized that the language of the marketing agreement used by the association read "consignment for sale to the association" instead of "consignment to the association for sale." This directs attention to the fact that marketing contracts should be carefully drawn so as to unequivocally show the exact relationship between the association and its members insofar as the products covered by the contracts are concerned.

The court further said, referring to the marketing agreements of the association:

"Accordingly, it would seem abundantly clear that if the agreements themselves could not be considered as contemplating a sale, involving a passing of title in the light of these definitions making a sale include a transfer and a disposition, that the transactions here engaged in, are within their purview. Akin to the position here taken is United States v. Rock Royal Co-operative, Inc., 307 U.S. 533, where the Court held for purposes of control over milk prices, a cooperative of the 'agency' type 'purchased' milk which it acquired for marketing.

"Likewise some value should be given to the administrative interpretation of the statute under which the agency operates, as it is

a sound rule of judicial construction that recognizes the special competence and knowledge of the administrative agency dealing with the particular subject matter under regulation. Green Valley Creamery v. United States, 108 F. (2d) 342.

"To accept the interpretation which the defendant asks this Court to adopt would be to the detriment of price control. In a shortage market, a seller will always sell to the buyer who can pay the highest price so that persons offering a lower price connot secure the commodity. This is the reason for price control during wartime scarcity of commodities. Price ceilings are designed to prevent buyers of scarce commodities from bidding up prices. If a cooperative of an 'agency' type is permitted to pay whatever prices it pleases to the milk producers, and all other producers may only pay Three and 72/100 Dollars ($3.72) per hundred weight, the cooperative will be able to corner the supply of milk from producers, or at least completely satisfy its requirements before other purchasers can secure a supply."

The association attacked the plan of wartime price control for milk marketed by producer cooperatives, but the court held that the contentions of the association were directed to the regulations issued by OPA and hence that the cooperative was barred from raising questions in the instant case with respect thereto. In this regard the court said:

"The defendant also makes a broad attack on the plan of wartime price control for milk marketed by producer cooperatives, but only where the attack is genuinely addressed to the provisions of the Act itself, rather than the Act as applied to the Regulation, may he properly raise the issue in this proceeding. Section 204(4) of the Act makes provision for the Emergency Court of Appeals and the Supreme Court upon review to have exclusive jurisdiction in determining the validity of any regulation or order. Accordingly, this special tribunal, and it alone, has any jurisdiction to consider the validity of any regulation, order or price schedule issued under Section 2 of the Act."

The cooperative was engaged in settling in full for milk delivered, 1 month after the close of that month. In other words, the association was operating on the basis of monthly pools. The effect of the decision in this case was to bar the association from paying to its farmer members each month for milk, more than the OPA price permissible to be paid by distributors to farmers for their milk. The court expressed no opinion on the right of the association to pay patronage dividends; but no reason is apparent why the association could not pay patronage dividends to its patrons, in accordance with Supplemental Order No. 84 issued by OPA, at the end of its fiscal year, or every 6 months if the books of the association were kept on a 6-month basis.

Allocations to Nonmembers Held Nondeductible

On November 29, 1944, the Tax Court of the United States decided the unreported case of Farmers Union Cooperative Exchange v. Commissioner of Internal Revenue, Docket No. 934. This case involved a nonexempt cooperative.

In computing the income taxes to be paid by it, the Commissioner of Internal Revenue had allowed the association to deduct patronage dividends of $4,181.82 which it had paid to its members. The association had credited $1,820.56 on its books to nonmembers and the question at issue was whether the Commissioner of Internal Revenue was right in refusing to allow the association to deduct the amount it had credited on a patronage basis to nonmembers.

The statute of Oklahoma under which the cooperative was incorporated required the directors to set aside not less than 10 percent of the net earnings each year in reserves until the amount of the reserve fund equaled the amount of its paid-up capital stock. The association had not done this. The following quotation is taken from the opinion in this case:

> "It is to be noted from the facts that, under section 1, Article VI of the petitioner's by-laws, and as required by the above statute, it is mandatory that not less than 10 percent of the petitioner's net earnings 'shall be set aside in a reserve fund until such reserve fund shall equal the amount of the paid up capital stock,' but that the $1,820.56 here in question was credited by the petitioner on its books to non-members, from the petitioner's net earnings, without a prior crediting of any part of the net earnings to a capital reserve. It is noted also that there is no by-law which requires any allocation and distribution of petitioner's net earnings to non-members by credit or otherwise. By section 4 of Article VI of the by-laws, the allocation of net earnings is left within the discretion of the petitioner's directors so long as they conform their actions to the requirements of the Oklahoma Statute. Inasmuch, therefore, as there was no actual payment of patronage dividends to non-members in the taxable year and, under the statute and the by-laws, it was within the discretion of the directors to restrict the distribution of earnings to members, to the exclusion of non-members, and a part, at least, of the amounts credited to non-members as patronage dividends was credited in direct violation of the provisions of both the Oklahoma Statute and the petitioner's by-laws, we find no basis in law or in fact for allowing the deduction of patronage dividends credited to non-members, but not paid, in determining the petitioner's net income, or for excluding such credits from gross income. It was still within the power of the petitioner to pay or to withhold from the non-members the patronage dividends credited to them. The claim of the petitioner is accordingly denied. See and compare Gallatin Farmers Co. v. Commissioner, 132 Fed. (2d) 706; Co-operative Oil Association, Inc. v. Commissioner, 115 Fed. (2d) 666; and United Cooperatives, Inc., 4. T.C.___ (promulgated Sept. 29, 1944)."

Attention is called to the fact that the Tax Court upheld the action of the Commissioner of Internal Revenue in refusing to permit the association to exclude or deduct the amount that had been credited on the books of the association to nonmembers because it was within the discretion of the cooperative to pay or to withhold from the nonmembers the patronage dividends credited to them. It is believed that there is no court case or published ruling of the Bureau of Internal Revenue which is inconsistent with the holding in the instant case.

In deciding the case under discussion the court laid some emphasis on the fact that the cooperative had failed to comply with the law of Oklahoma under which it was incorporated in that it had failed to carry 10 percent of its earnings to a reserve fund. A similar situation was involved in the case of Gallatin Farmers Co. v. Commissioner, 132 F.2d 706 (see Summary No. 18, page 1), in which the Court of Appeals held that the association could not successfully complain because the Commissioner had refused to allow the association to deduct or exclude certain patronage dividends.

Likewise, in the case of Co-operative Oil Association, Inc. v. Commissioner, 115 F. 2d 666, the association was denied the right to deduct amounts which it had retained in the business although it had advised its patrons by letter that in due course the amounts retained would be distributed to them on a patronage basis.

In Midland Cooperative Wholesale v. Commissioner, 44 B.T.A. 824, the Board of Tax Appeals (now the Tax Court of the United States) allowed the cooperative to deduct or exclude amounts which it had allocated to its patrons, but a careful reading of the opinion will show that this was done only on the theory that each patron had the right to require the amount allocated to it to be paid on demand.

In United Cooperatives, Inc. v. Commissioner, 4 T.C. 93 (see Summary No. 24, page 1), it was held that amounts which were retained by the association and for which certificates of stock were issued, could be excluded in determining the amount of the income taxes of the association, but the association was found to be positively obligated to issue stock or to remit in cash the amount of the patronage dividends in question, and in addition, and I think this should be stressed, the bylaws of the association shows that the money in question was actually received under terms and conditions which the Court found kept it from being income in the hands of the association, and at least insofar as the amounts in question were later evidenced by stock, these amounts were apparently received at the instant of receipt as capital.

It is clear from the decisions of the courts that a nonexempt organization may not as a matter of right deduct amounts which it has allocated to its members or patrons on a patronage basis if this is done simply on an optional or discretionary basis. Indeed the decision of the Tax Court in United Cooperatives, Inc., proceeds on the theory that amounts actually paid in cash by a nonexempt association may be excluded in computing its

income taxes only if the association is under a firm obligation to pay the amounts in question to its patrons without the necessity of any action by its board of directors.

It should be kept in mind that the provisions for exemption (26 U.S.C. 101 (12)) have no application to a nonexempt association and play no part in determining the amount of taxes it is required to pay. The liability of a nonexempt association for income taxes is determined in the same way that the liability of any other taxpayer is determined. The fact that a nonexempt association may have some exclusions or deductions that a non-cooperative organization ordinarily does not have, does not alter the fact that its liability for income taxes is determined in accordance with the same fundamental principles that are applicable to commercial concerns generally.

Tender

In the opinion in the case of Brewster Cooperative Growers v. Brewster Orchard Corporation, decided by the Supreme Court of Washington, 150 P. 2d 847, 852, the court said:

> "In their brief, appellants do not advance any argument with reference to the alleged insufficiency or invalidity of respondent's tender of performance. In our opinion, the tender as offered in and by the complaint was sufficient in form, manner, and amount. The tender having been made, and the action being an equitable one, it was not necessary to keep the tender good by paying the amount thereof into court, although that was subsequently done. In such an action, it is sufficient if the money is paid into the official registry when so directed by the court. Dare v. Mount Vernon Inv. Co., 121 Wash. 117, 208 P. 609; see, also, Murry v. O'Brien, 56 Wash. 361, 105 P. 840, 28 L.R.A., N.S., 998. Furthermore, it is not necessary to keep a tender good when the party for whose benefit the tender has been made repudiates the contract, because the law will not compel anyone to do an idle thing. Bruggemann v. Converse, 47 Wash. 581, 92 P. 429; Gibson v. Rouse, 81 Wash. 102, 142 P. 464; Calhoun, Denny & Ewing v. Pederson, 85 Wash. 630, 149 P. 25."

Parent Corporation Held Liable on Contracts of Subsidiary Corporation

In Whitehurst v. FCX Fruit & Vegetable Service, Inc., et al., 32 S.E. 2d 34, the Supreme Court of North Carolina affirmed a judgment for $20,000 against the Farmers Cooperative Exchange, Inc., and a subsidiary corporation, FCX Fruit & Vegetable Service, Inc. It appeared that one Whitehurst entered into a marketing agreement with FCX Fruit & Vegetable Service, Inc., in 1941, and in 1943 he entered into a marketing sales agreement with that corporation. Whitehurst and his partner purchased

potatoes from growers at the ceiling price permissible to be paid them and delivered these potatoes to FCX Fruit & Vegetable Service, Inc.

There was a serious difference in the testimony adduced by the plaintiffs and the defendants, but the jury resolved the conflicts in the testimony in favor of the plaintiffs. One of the matters in dispute was whether the Farmers Cooperativr Exchange, Inc., which owned all of the stock of the FCX Fruit & Vegetable Service, Inc., was liable under the contracts entered into by Whitehurst with its subsidiary, the FCX Fruit & Vegetable Service, Inc. In this connection the court said:

> "The mere fact that the Farmers Cooperative Exchange, Inc., owns all the capital stock of the FCX Fruit & Vegetable Service, Inc., and the further fact that the members of the board of directors of both corporations are the same, nothing else appearing, is not sufficient to render the parent corporation liable for the contracts of its subsidiary. In order to establish liability on the part of the parent corporation on such contracts, there must be additional circumstances showing fraud, actual or constructive, or agency. 13 Am. Jur., Sec. 1384, p. 1217. Here plaintiffs are relying on agency."

As stated in the foregoing quotation, the plaintiffs contended that the subsidiary corporation was simply acting as agent for the Farmers Cooperative Exchange, Inc. Evidence in support of the theory that the subsidiary was simply the agent of the parent corporation was presented and the court found that the evidence justified this conclusion. It appeared that the subsidiary corporation had an estimated worth of only $2,000 while the parent corporation was worth many thousands of dollars. Both corporations had the same directors.

Under normal conditions, a parent corporation is usually not liable on contracts entered into by a subsidiary, but if the subsidiary is not in all respects carried on as a separate, distinct, independent corporation, and if it appears that it is simply acting as agent for the parent corporation, the parent corporation may be held liable on contracts entered into by the subsidiary. Likewise, in cases of fraud, actual or constructive, as well as agency, the parent corporation may also be held liable on contracts made by a subsidiary. Insofar as third persons are concerned, the business of a subsidiary should be rigidly separated and meticulously kept apart from the business of the parent corporation if that corporation is to avoid responsibility for obligations of the subsidiary.

The court decisions on this subject are not entirely consistent (see 18 C.J.S. Corporations, Sec. 7). Some courts have undoubtedly held parent corporations liable on the obligations of subsidiaries under conditions where other courts would not have done so. In all States great care and caution must be exercised if a parent corporation is to avoid liability on obligations of its subsidiary. It has been suggested that a subsidiary could in effect stipulate in its contracts that it was contracting solely on behalf of itself.

In Consolidated Rock Co. v. DuBois, 312 U.S. 510, 524, the Supreme Court said:

> "To the contrary, it is well settled that where a holding company directly intervenes in the management of its subsidiaries so as to treat them as mere departments of its own enterprise, it is responsible for the obligations of those subsidiaries incurred or arising during its management."

See also: Weisser v. Mursam Shoe Corp., 127 F. 2d 344, 145 A.L.R. 467.

Subsidiary Corporations and OPA Regulations

In the case of Great Northern Co-Operative Association v. Chester Bowles, Price Administrator, _____ Fed. 2d_____, decided by the United States Emergency Court of Appeals on December 29, 1944, that court upheld a regulation of OPA which operated to prevent the Great Northern Co-Operative Association, a wholly owned subsidiary of the Northern Wisconsin Tobacco Pool, from disposing of tobacco, which the subsidiary corporation had purchased from the Pool, at a price in excess of the price at which the subsidiary had purchased the tobacco.

The subsidiary corporation was apparently organized to function as a dealer and with a view to enabling the growers of tobacco, who were members of the Pool, to receive through patronage refunds the advantage of the higher price which a dealer could obtain for tobacco under the regulations of OPA. Under these regulations the Pool was authorized to sell tobacco at a price only 1 cent per pound higher than the price paid by the Pool to farmers for their tobacco. The price to growers was 30 cents per pound and the Pool under the regulations was barred from disposing of the tobacco at more than 31 cents per pound. A dealer, on the other hand, was authorized to sell tobacco at 36 cents per pound, and it was evidently the intention of the Pool to have all of the financial advantages accruing from disposing of the tobacco for 36 cents per pound reflected back to the growers by means of patronage refunds.

After the organization of the subsidiary corporation - and it was argued that it was done on account of the organization of the subsidiary - OPA adopted an amendment to its regulations which had the effect of barring the subsidiary from selling the tobacco which it purchased from the Pool for a higher price than the price it paid therefor.

The following quotations are taken from the opinion in this case:

> "Complainant's counsel frankly admit that the only purpose for complainant's creation and existence was to secure for the growers of tobacco greater patronage dividends than was permissible or than could have been realized from the ceiling price of 31 cents fixed for grower co-operatives. They apparently believed there was a legitimate loophole in the then existing Regulation by virtue of which they might capture for the growers something in

addition to their then possible patronage dividends. This, they seemed to think, was justified by the language of Supplemental Order No. 84. Obviously, complainant had no excuse for existence for any other purpose. It performed no useful function in the tobacco trade industry. It received the tobacco from the original co-operative and immediately sold it in the same form without treating it and without performing any service upon or with regard to it. Equally as obviously, complainant became the alter ego of The Pool and, in turn, of its grower members; and, as such, now insists that the Regulation having contained this loophole, the attempt of the Administrator to eliminate it and thus prevent evasion and circumvention of the ceiling price was illegal.

"To this we can not assent. Indeed, we think The Pool and its members too easily permitted themselves to be persuaded that Supplemental Order No. 84 contemplated any such course of action. That order attempted in no way to fix prices. It merely provided that, though a grower ceiling was fixed at a certain sum and that of its co-operative at more, the patronage dividends received from the Co-operative by the growers in excess of the grower's ceiling should not constitute violation of price ceilings by the growers. Surely this order did not contemplate that growers could receive further returns in the form of patronage dividends legitimately if the Co-operative violated the ceiling price of 31 cents and resold at a higher price. Indeed, the Regulation expressly forbade a resale by the Co-operative at such an increased price; it could not legitimately make such sales. That was the inspiring cause of the creation of complainant. To say that complainant, with The Pool its only member, could be created and operate solely as a useless co-operative upon top of another for the sole purpose of doing what the original co-operative could not do is fallacy to the nth degree. The Pool can not sell tobacco in the same form at more than 31 cents; it can not take the name of complainant and do so. The Administrator was amply justified in promulgation of the Amendment.

* * *

"We suggest further that, in view of the character of the previously existing Regulation and the intent of the law, it would seem that the Administrator might well have had remedial action against resales by complainant beyond the ceilings without amendment, for, in determining liability to conform to a statutory standard of conduct, courts are practical and deal with realities; they 'look through form to substance and examine the entire transaction'; they 'pierce the corporate veil' to determine where the moving force actually lies. Corporate entity is disregarded where not to do so will defeat public convenience, work a fraud or justify a wrong. New Colonial Co. v. Helvering, 292 U.S. 435; Taylor v. Standard Gas Co., 306 U. S. 307; U. S. v. Lehigh Valley R. Co., 220 U. S. 257; Gulf Oil Corporation v. Lewellyn, 248 U. S. 71; S. P. Co. v. Lowe, 247 U. S. 330; Fish v. East, 114 F. 2d. 177

(CCA10); Groves v. Comr. of I.R., 99 F.2d 179 (CCA4); Dunnett v. Arn, 71 F.2d. 912 (CCA10); Helvering v. Gordon, 87 F. 2d. 663 (CCA8). Consequently, when complainant was organized with the growers' co-operative as its only member and the former, notwithstanding its corporate form, existed merely as a nominee of the latter, there became obvious an evasion of the then existing restriction of prices upon resale which we think wholly inconsistent with the underlying conception of price control, and, if generally permitted, wholly destructive of the Congressional intent.

* * *

"It is insisted that the Amendment, in view of the fact that it prohibits certain resales of tobacco at prices higher than the purchase price, necessarily establishes a maximum price which is not generally fair and equitable within the requirements of the Act. The basic assertion in this respect is that complainant, who purchased tobacco at the maximum price, 'is on the face of things required to do business at a loss' and the argument is that this itself demonstrates illegality of the price. However, we find in the record no showing that the maximum prices attacked are insufficient or inadequate. We have no evidence of marketing operations or of costs involved, and there is no attack upon the adequacy of the one cent differential allowed to co-operatives as a satisfactory compensation for the marketing functions which they perform. The requirement that maximum prices shall be generally fair and equitable was not intended by Congress to establish prices which would compensate complainant if it is found to be an artificial device for evasion of price control, serving no other useful purpose. Nor does the Act require that price regulation shall assure every dealer a profit, Interwoven Stocking Co. v. Bowles, 141 F. 2d. 696 (E. C. A.); Philadelphia Coke Co. v. Bowles, 139 F. 2d. 349 (E. C. A.); United States Gypsum Co. v. Brown, 137 F. 2d 803 (E. C. A.); much less can it be said that the intent of Congress, in its war on inflation, was that, in order to be fair and equitable, a price must be fixed at such a figure as will produce a profit through an evasive practice."

Rules and Regulations Alleged to Violate Anti-Trust Act

The Dried Fruit Association of California and its members were indicted for conspiracy in restraint of trade (4 Federal Rules Decisions 1) in violation of the Sherman Antitrust Act, 15 U.S.C.A. §1. The Association appears to have been a trade association and its members composed of concerns in the dried fruit business, all of whom were indicted, including some cooperative associations.

The Dried Fruit Association adopted certain rules and regulations which were binding on the members of the Association and the basis of the indictment of the Association and its members was the fact that it was

claimed the rules and regulations of the Association were in violation of the Sherman Antitrust Act. The charge of the court in this case will be found in 4 Federal Rules Decisions 1. The following quotations from the charge of the court in this case show the basis for the indictment:

"Violation of the Sherman Anti-Trust Law, as I have just stated to you, is declared by the Act to be a misdemeanor. Being a misdemeanor, it is not required to be proved that defendants, or any of them, intended to violate the law, or intended to restrain interstate or foreign commerce. If you are convinced beyond a reasonable doubt to a moral certainty that defendants, or any of them, agreed and combined to restrain, fix, or depress prices of commodities moving in interstate commerce, their intent in entering into such agreement or combine is immaterial. The law presumes that persons intend the necessary and direct consequences of their acts.

"The indictment in this case charges that the defendants entered into a combine or conspiracy to restrict or depress or stabilize prices for commodities that moved in interstate markets.

* * * * *

"By the Sherman Anti-Trust Law, the fixing of prices by two or more persons acting in combination or agreement is unlawful and such agreement or combination is unlawful. If it be determined that an agreement or conspiracy (which I have already defined to you) has for its purpose, or the effect of which is to fix, stabilize or otherwise substantially affect prices of commodities moving in interstate commerce, then the purpose or intent or motives, however, harmless, which the parties to such agreement say or claim to have had in mind in entering into or promoting such agreement, is immaterial and not a defense. No matter what the motive of the parties to such an agreement, if such agreement in fact does so affect prices of commodities moving in interstate commerce, the parties to such agreement have violated the Sherman Anti-Trust Act.

"Any combination which tampers with price structures is engaged in an unlawful activity. To the extent that members of such a combination raise, maintain or stabilize prices they are directly interfering with the free play of market values. The Sherman Anti-Trust Act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference.

"As the counsel have pointed out to you, the indictment here was originally in two counts. The second count has been already dismissed. The indictment, in the count now remaining, charges the formation and carrying out of an unlawful conspiracy to unreasonably, unduly and directly restrain interstate and foreign commerce of dried fruit products in violation of the provisions of the Sherman Act, which I have read to you. It charges that the object and purpose of the alleged conspiracy was to fix, maintain, stabilize and depress prices paid by defendant packers

to growers for dried fruit products purchased for distribution in interstate commerce and to fix, maintain and stabilize at artificial and non-competitive levels dried fruit prices for products sold by the defendants in interstate commerce. That is the charge.

"Now, ladies and gentlemen, let me say this to you: You have had a pretty clear description from the evidence of the manner in which the dried fruit industry is conducted in California, of the processes through which the products go before being finally sold and then proceed to the trade in interstate commerce. It appears in this case that a number of corporations, including co-operative organizations, have been charged in this indictment with a conspiracy, the nature of which has already been explained to you, and that the Dried Fruit Association, a defendant here, was an association which consisted of all of these defendants, as well as others who have been already dismissed from this proceeding.

"A Co-operative association, such as the Dried Fruit Association, one of the defendants in this case, otherwise free from objection, which carries with it no monopolistic menace is not to be condemned as an undue restraint upon interstate commerce merely because it, and its members, may effect changes in market conditions where the changes are in mitigation of recognized evils and do not impair, but rather foster, fair competitive prices.

"In this case, the evidence without dispute shows that the other defendants were members of the defendant Dried Fruit Association for varying periods, and all at some time within the period commencing January 1, 1936, and ending June 3, 1941, the latter date being the date of the return of the indictment herein. The evidence without dispute also shows that all of the members of the association agreed by subscribing to membership therein, that certain rules, regulations and practices promulgated by the association were binding upon and to be adhered to by the members. Among the practices, rules and regulations were the following: Use of uniform form of sales contract in different branches of the industry for purchase and sales by the packer members; uniform carton and label allowances; prohibition of guarantees against price decline; price differentials between various packages of fruit; uniform discount charges; uniform prohibition of credit; prohibition of minimum returns to growers; prohibition against so-called flat buying; requirement that merchandise be shipped f.o.b. California shipping points; requirement that growers be paid for No. 2 grade fruit on a percentage basis of the price for No. 1 grade fruit.

"It further appears that there was free and active competition in the market at all times with respect to the basic price for dried fruit products bought and sold by the defendant packers, and that such prices were arrived at by free bargaining.

"It is contended by the Government that the rules, regulations, and practices of the Dried Fruit Association that have been mentioned,

affected substantially the free determination in the market of the prices of the various commodities involved as they moved in the stream of interstate commerce.

"As the Court sees it, therefore, the issue for your consideration is this: When the Dried Fruit Association and its members associated themselves together and bound themselves to follow the rules, regulations and practices hereinbefore described, did they thereby agree to fix, stabilize or substantially affect the prices of California dried fruit products as they moved in interstate commerce?"

It is understood that the jury found the defendants not guilty in this case (United States v. Dried Fruit Association of California, 4 F.R.D. 1).

Obviously, the Department of Justice regarded the practices, rules, and regulations of the Dried Fruit Association as contrary to the Sherman Act, otherwise the Association and its members would not have been indicted. Attention is called to the fact that none of the rules and regulations purported to fix prices for dried fruit or to prescribe a formula for fixing such prices. Any agreement by those in a given business to fix the price of commodities sold by them is per se illegal. The reasonableness of the prices fixed is immaterial (United States v. Trenton Potteries Co., 273 U.S. 392). Cooperative associations, even though they meet the conditions of the Capper-Volstead Act, have no more right to agree with other concerns on prices or even with other cooperative associations than have ordinary private corporations (see United States v. Borden Co., 308 U.S. 188). Cooperative associations, it will be remembered, in their business relations with third persons are subject to the antitrust laws to the same extent as are ordinary private corporations.

Just when the rules and regulations of a trade association that are intended to prescribe uniform trading rules or to prohibit certain practices are invalid, is not always easy to determine. It seems to be established that statistical information covering such matters as stocks on hand, shipments made, and prices received or contracted to be paid, may be freely furnished to a trade association by its members, which association may compile the information and distribute it to its members without violating the antitrust laws (Maple Flooring Manufacturers Association v. United States, 268 U.S. 563). Such information is regarded as conducive to more intelligent business transactions. Likewise the right of members of a trade association to receive, compile, and distribute credit information covering customers appears to be clear (United States v. Swift & Co., 270 U.S. 124).

In at least one case the Supreme Court of the United States has held that rules and regulations of an exchange governing trading might actually operate to increase instead of decrease competition. In that case, Chicago Board of Trade v. United States, 246 U.S. 231, the legality of a rule adopted by the Chicago Board of Trade was involved. The rule prohibited its members from purchasing or offering to purchase during the period between the session of the Board termed the "call," and the

opening of the regular session the next business day, grain "to arrive" at a price other than the closing bid at the "call." In holding that this rule did not violate the Sherman Act, the Supreme Court said:

> "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition."

Lien Lost by Consent to Sale

In Prichard v. Farmers Co-op. Soc. No. 1 of Merkel (Tex. Civ. App.) 185 S. W. 2d 240, the defendant, a cooperative gin, was sued for the conversion of cotton on the theory that the landlord had a lien on the cotton and that the cooperative gin by buying the cotton from the tenant was guilty of conversion. The cooperative introduced evidence that for 14 years the landlord had permitted the tenant to remove cotton from the rented premises and to sell it in the open market and that the landlord depended upon the tenant to deposit in the local bank to his credit one-fourth of the proceeds of such sales. The jury found that the landlord had consented to the tenant disposing of the cotton and, on appeal, the court held that in view of this finding the cooperative gin was not guilty of conversion, and that the gin in buying the cotton took free of the landlord's lien. Apparently, the finding of the jury and the conclusions of the court on appeal that the landlord's lien had been lost were based upon the fact that the tenant for many years had disposed of the cotton grown by him. In other words, the consent of the landlord that the tenant sell the cotton produced by him in a given year was apparently implied.

Every cooperative association acts at its peril in handling agricultural commodities. If there is a lien on such commodities, good against third persons at the time they are handled by a cooperative, the cooperative, unless the holder of the lien has consented to the mortgagor or lienor disposing of such commodities, is ordinarily guilty of conversion. Good faith or lack of actual knowledge of the lien by the cooperative is immaterial. In 10 American Jurisprudence, Section 203, the following appears:

> "It is a settled rule of law that upon a sale of the mortgaged property by the mortgagor with the mortgagee's unconditional consent, the mortgage lien does not attach to the proceeds. It has been quite generally held, however, that where the consent is conditioned upon the mortgagor's agreement to apply the proceeds of the sale upon the mortgage debt, the mortgagee does not lose his right to the proceeds by such consent, although there is some authority to the contrary. Under such circumstances, as between the mortgagor and the mortgagee, the lien of the mortgage is transferred from the chattels to the proceeds of the sale. The mortgagor becomes the agent of the mortgagee with reference to such proceeds which may be recovered by the mortgagee from any person having possession thereof not having a

lawful claim thereto under or through the mortgagor. There is no doubt of the mortgagee's right to the proceeds in such case where the proceeds are, by the terms of the agreement, to be received and applied by a third party to the mortgage debt. Furthermore, where a mortgage, while it authorizes a sale of the goods by the mortgagor, expressly provides that it shall be in the name of the mortgagee and that his lien shall follow the property, the mortgagor, in making the sale, is acting as the agent of the mortgagee who may then recover the purchase price from the purchaser notwithstanding an attachment against the purchaser by other creditors of the mortgagor. This is so although some other mortgagee also requested that the same property be sold at the same price."

Trade-marks - Unfair Competition

The Hi-Land Dairyman's Association of Salt Lake City brought suit against the Cloverleaf Dairy of that city to enjoin unfair competition by defendant through its use of paper milk cartons similar to those used by the association. The association lost in the trial court and the case was carried to the Supreme Court of Utah which reversed the Trial Court (Hi-Land Dairyman's Ass'n. v. Cloverleaf Dairy, 151 P. 2d 710).

It appeared that the association distributed milk in Salt Lake City in a paper container "known as the Pure-Pak carton," which cartons had a definite color scheme and lettering that was intended to make them easily indentified. The defendant, after the association began the distribution of milk in paper cartons, also began the distribution of milk in paper cartons and at first it employed what "is known as the American Can carton." Later defendant changed to the Pure-Pak carton and, after having used this form of carton with a particular design for some time, it changed the design and color scheme thereon and employed a style of coloring and lettering on such cartons that the Appellate Court found was calculated to mislead buyers of milk, especially in self-service stores, inasmuch as there appeared to be quite a resemblance from the standpoint of general effect to the carton used by the association. In holding in favor of the association, the Appellate Court, among other things, said:

"Plaintiff does not complain of the use by defendant of the Pure-Pak carton, since it is a patented article, and the right to use it is sold by the owner of the patent in such manner as he sees fit. Nor does he complain of defendant's use of the same shade of red color, as all cases recognize the rule that color alone is not subject to appropriation by any one manufacturer. Diamond Match Co. v. Saginaw Match Co., 6 Cir., 142 F. 727; Green v. Ludford Fruit Prod., D. C., 39 F. Supp. 985; Southern Cal. Fish Co. v. White Star Canning Co., 45 Cal.App. 426, 187 P. 981; A. G. Morse Co. v. Walter M. Lowney Co., D.C., 256 F. 935. It is the combinations of color and design that are protected. Lalance & Grosjean Mfg. Co. v. National Enameling & Stamping Co., C.C., 109 F. 317. For the same reason plaintiff does not complain of

defendant's use of the bold Gothic type on its cartons. What plaintiff does complain of is the combination of all of these features, and of a design or massing of color and print on defendant's cartons so similar to plaintiff's use of color, design, and type that the buying public, giving only the attention ordinarily given to the purchase of milk will or might be deceived.

"Since the evidence shows that most customers make their selection by an overall impression of the cartons in a mass display, the distribution of color mass on the cartons is particularly important. Both cartons have the same heavy color mass at the top, lighter mass, or thin effect in the center, and heavier mass at the botton. The full effect of such similarity upon the purchaser can best be noted by seeing a number of cartons of each brand displayed together as they are when offered for sale in the self-service stores. Such display was arranged for the benefit of the trial court, and the exhibits used are before before us. The massing of the cartons in this manner makes them appear much more similar than they are when viewed singly side by side.

"It appears from the record that at the time defendant changed to the Pure-Pak carton and the new design, print and dress, the plaintiff's milk sales at self-service stores were considerably larger than those of defendant; and that at the time of trial plaintiff did not have this lead in number of sales. Plaintiff contends that defendant changed its containers and dress to simulate the plaintiff's for the purpose of creating a situation whereby the patrons of plainiff would mistakenly pick up a Cloverleaf carton instead of a Hi-Land, and thus enable defendant to raid plaintiff's business. As proof of this, plaintiff notes the following points: A change by defendant from the American Can flat top container theretofore used by it to the roof top Pure-Pak container used by plaintiff; a change in basic color of the container from light tan to the white base used by plaintiff; the abandonment of the script type theretofore used by defendant for the bold Gothic type used by plaintiff; the elimination of the two red bands about the container which had prior to that time been the distinguishing feature of the dress on the Cloverleaf carton; the adoption of a new design or dress for the container showing a heavy massing of red consisting of Gothic type and a picture or design near the top of the container; a short space of small print below this around the middle of the carton; a heavier massing of red near the bottom, but not as heavy as that near the top, giving the general overall picture of red print on white background so arranged as to set the general groupings of color areas of approximately the same size and in the same relative positions on the cartons as plaintiff was using. This it is argued makes a general picture impression on the mind of the purchaser that

the cartons are all the same, and since plaintiff (Hi-Land) had established its trade and good will by that general picture impression (mental image), defendant was raiding plaintiff's established business and good will by deceiving and misleading the public - an unfair method of competition."

The court further said:

"Where a competitor in packing, labeling, dressing, use of colors, and arrangement of type so closely simulates the goods of another, although using a different name as to enable persons handling such goods to palm them off on customers, as the goods of such rival, it is unfair competition, and such simulation will be restrained."

The defendant contended that the association had not at all times been able to supply the demands of its customers because of a shortage of milk and argued that the association "can show no damage because he already has all the business he can handle, and the fact that defendant has been selling its products to plaintiff's customers does not damage plaintiff." The Court held, however, that it was unnecessary to show actual pecuniary loss and reversed the case and remanded it "to the District Court of Salt Lake County with directions to enter findings of fact and conclusions of law to the effect that defendant in adopting its present milk carton knowingly imitated and simulated plaintiff's container so closely as to cause confusion and secure for itself some of plaintiff's trade; that the pattern and design adopted had the effect of creating confusion, misleading the public, and securing some of plaintiff's business; its use constitutes unfair competition on defendant's part and should therefore be enjoined. Let injunction issue accordingly."

Reparations Awarded Under Perishable Agricultural Commodities Act

The Maine Potato Growers, Inc., of Presque Isle, Maine, contracted to sell to Jos. Martinelli & Company, Inc., of Springfield, Massachusetts, a carload of U.S. No. 1, size A, 2-inch minimum Green Mountain potatoes at $2.70 a hundred pounds delivered. The shipment arrived at Springfield on January 5, 1944, and was inspected by the buyer on January 6, 1944, who rejected them claiming they were excessively affected by field frost. The potatoes were later sold by the Maine Potato Growers, Inc at a loss of $322.65 which included a demurrage charge of $7.65.

The Maine Potato Growers, Inc., in due course filed a complaint under the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 1940 ed. 499a et seq.), alleging that Joseph Martinelli & Company, Inc., had unlawfully rejected the potatoes. The decision in this case (Maine Potato Growers, Inc. v. Jos. Martinelli & Company, Inc.) is reported in the Agricultural

Decisions of the Department of Agriculture, Vol. 3, No. 11, as A.D. 790. In the report of this case it is stated:

> "Complainant relies upon two Federal inspections to support its claim that the potatoes at the time of delivery conformed to the contract specifications. The shipping point inspection made on December 29, 1943, and the one made at destination on January 6, 1944, both found that the potatoes had less than one percent decay and were U. S. No. 1, size A, 2-inch minimum. An inspection certificate made by the Railway Perishable Inspection Agency on January 6, 1944, likewise shows that less than one percent decay was noted.
>
> "Respondent alleges that one of its employees, with 20 years experience, examined the potatoes and did not consider them even U. S. No. 2's; and that the previous week it had purchased a similar car of Maine potatoes which was passed by the Federal inspector but had to be repacked at a great loss because of field frost. It is pointed out that on January 14, 1944, a Federal appeal inspection was made and the certificate states as to condition: 'In 1 stack next A-end bunker samples examined show 8 to 15 average 11 percent Wet type Fusarium Tuber Rot either following slight cuts or occurring as soft rot on small spots scattered over surface of affected potatoes. In remainder of load 50 percent of samples show no soft rot, 40 percent show 1 to 2 percent, and 10 percent show 4 percent, average 1 percent for this portion of load.' From this, the respondent argues that it was entitled to receive sound potatoes which would not develop any appreciable amount of decay during the distribution period of one to five weeks."

The conclusion was reached that the respondent had rejected the potatoes without reasonable cause and therefore was ordered to pay to the associa- as reparation $322.65 with interest thereon at 5 percent per annum from January 6, 1944, until paid.

Federal Motor Carrier Act - Exemption of Agricultural Cooperatives

In the case of Interstate Commerce Commission v. Jamestown Farmers Union Federated Cooperative Transportation Association, 57 F. Supp. 749, the Commission instituted proceedings for the purpose of enjoining the Association from engaging in the transportation business without obtaining a certificate of public convenience and necessity to do so under the Federal Motor Carrier Act. The Commission alleged that the Association, by operating without a certificate of public convenience and necessity, violated -

> ". . . Sections 206(a) and 209(a) of Part II of the Interstate Commerce Act, 49 U.S.C.A. § 306(a) and § 309(a). These sections require that all common and contract carriers, which carry goods

by motor vehicle and which are subject to the provisions of the Act, must procure a certificate of public convenience and necessity from the Interstate Commerce Commission as a condition for operating their vehicles in such transportation. Section 303(b) of the same Act provides, however, that 'Nothing in this chapter, except the provisions of section 304 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (5) motor vehicles controlled and operated by a cooperative association as defined in sections 1141-1141j of Title 12, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined; * * *.'

"Defendant is a federation of cooperative associations. Its members are themselves cooperative associations. Defendant's business consists exclusively of transporting livestock from its members in the State of North Dakota eastward to the stockyards at South St. Paul, Minnesota, by motor truck for compensation, and the transportation for compensation on the westward return trip from one of the defendant cooperative members in South St. Paul, Minnesota, of various merchandise for its North Dakota cooperative associations. All the association members which own and control the defendant are farmer-owned and controlled, and they are the means by which their member farmers act together in marketing their farm products and in purchasing their farm supplies. Approximately 3 to 14 per cent of the merchandise defendant delivers to its North Dakota members from South St. Paul, Minnesota, is sold to persons who are not farmers.

"The Agricultural Marketing Act of 1937 (Agricultural Marketing Act of 1929, as amended), as now amended, is found in Sections 1141 to 1141j, Title 12 U.S.C.A. In passing this Act, it was the policy of Congress, as declared in Section 1141: '*** to promote the effective merchandising of agricultural commodities in interstate and foreign commerce, so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities, and their food products - *** (3) by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies.'

"Sections 1141a to 1141i provide for the creation of a Farm Credit Administration and its powers and purposes, and detail the aid which can be accorded to cooperative associations by the Administration. It is in Section 1141j that we find the definition of a cooperative association. It reads:

'As used in this subchapter, the term "cooperative association" means any association in which farmers act together in processing,

preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: Provided, however, That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

'First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

'Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

'And in any case to the following:

'Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.'"

The Interstate Commerce Commission conceded that a cooperative association meeting the conditions of Section 1141j of 12 U.S.C. and composed of farmers would be entitled to engage in the transportation business; but the Commission argued that Section 1141j quoted above did not provide for a federated type of organization. It further argued that even in the event it was conceded that a federated type of organization was contemplated by Section 1141j, that such an association could only transport agricultural commodities from the farms of its members to market and then haul commodities back from market to the farms of its members.

Owing to the fact that Section 1141j of 12 U.S.C. defines the agricultural cooperative associations that are eligible to borrow of the 13 banks for cooperatives, the St. Paul Bank for Cooperatives appeared as amicus curiae in this case in order that the court might have the benefit of the interpretations which had been placed upon Section 1141j in the administration of the banks for cooperatives. The case was tried under a stipulation of facts and the court found that the federated association was a cooperative association within the meaning of Section 1141j and was therefore exempt from obtaining a certificate of public convenience and necessity from the Interstate Commerce Commission. The following quotations from the opinion in the case indicate the basis for the conclusions reached:

"The Agricultural Marketing Act does not require that all members of a cooperative must be farmers. It merely says that a cooperative association means any association in which farmers act

together in the handling and/or marketing of farm products of the persons so engaged and also an association in which farmers act together in purchasing, distributing and/or furnishing farm supplies and/or farm business services. The fact that defendant's members are not farmers, but are other cooperatives, is not fatal to defendent's status under the Act if farmers act together in the furtherance of its activities within the purview of the Act. That the defendant is an organization in which farmers act together cannot be seriously controverted. Undoubtedly, the farmers in practice have found it to be more efficient in the marketing of their livestock to have the cattle, etc., assembled at the place of business of the local associations, and then transported from such local places to the market in South St. Paul. And presumably they have also determined that the purchase and distribution of farm supplies is more economical and more efficiently handled under an arrangement whereby such supplies are transported to the local cooperatives for distribution among their farmer members. In other words, the local member cooperatives have but one object, and that is to further the business and farming activities of its farmer members within the purview of the Agricultural Marketing Act. In order to attain such objectives and such purposes more effectively, the local associations have united into a federated cooperative organization which carries on their transportation business.

"Section 1141j does not expressly require that the marketing of farm commodities and the purchasing and distribution of farm supplies by a federation or any other cooperative shall be carried on directly with the farm to which they are ultimately to go, and in view of the purposes of the Agricultural Marketing Act, there is no implication therein which would justify such a construction. The purpose of the Act is to aid the farmer. Methods of marketing and distribution beneficial to him were obviously intended. That it may be more advantageous to the farmer under certain circumstances to have a large cooperative doing the buying of farm supplies, etc., for the smaller local cooperatives seems evident. Moreover, it would not only be most difficult but highly uneconomical and a frustration of the very beneficial purposes of the Act to require a federation of cooperatives to send its trucks to deliver or pick up from the individual farmer a very small fraction of a load. In the final analysis, under the system adopted by the defendant and its members, the marketing of farm commodities and produce and the distribution of farm supplies are evidently carried on with greater efficiency, and greater financial benefits inure to the individual farmers who belong to the local cooperatives. Such a practice is entirely consonant with the purposes of the Agricultural Marketing Act. It definitely consists of a rendering of farm business services to the farmers.

"Some contention is made that the defendant is without the Agricultural Marketing Act because some of the farm supplies which it transports to its members may not be sold by the local cooperatives to farmers. But Section 1141j permits an association to do business

with non-members. The provision in this regard has already been noted. The record herein indicates that the mandates of this provision are fully recognized and followed by the member cooperatives of this defendant. Moreover, cooperatives which are in the retail business of furnishing farm supplies to its members are confronted with certain practical problems in meeting competition with other retail institutions in their community. Necessarily, goods must be handled by them which may not be strictly farm supplies. Some of their customers may not be members or even farmers. But if the cooperative is predominantly engaged in one or more of the activities specified in the Agricultural Marketing Act, and if its business with non-members is in an amount not greater in value than the total amount of the business that it transacts with its own members, such association does not lose its fundamental character as a cooperative. In other words, if such activities are merely incidental to, and necessary for the effectuation of the cooperative's principal activities as embraced within the Act, the status of the cooperative remains unimpaired. Such views have been reflected in the time-tested administrative practice of the Farm Credit Administration in connection with the availability of loans to cooperatives from the banks for cooperatives, and such practice seems in harmony with the purposes of the statute." (Underscoring added.)